

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

ATLAS REFINERY, INC.,

and

LOCAL 4-406, UNITED STEEL,  
PAPER AND FORESTRY, RUBBER,  
MANUFACTURING, ENERGY,  
ALLIED, INDUSTRIAL AND SERVICE  
WORKERS INTERNATIONAL UNION,  
AFL-CIO

Case: 22-CA-28403

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**EXCEPTIONS TO THE DECISION OF THE  
ADMINISTRATIVE LAW JUDGE**

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COMES NOW, Respondent, ATLAS REFINERY, INC., (hereinafter the "Company"), pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board, ("Board"), files its exceptions to the August 7, 2009 Decision of the Administrative Law Judge Michael A. Rosas.

Atlas Refinery, Inc. takes exception:

1. To the ALJ's conclusion of law at ALJD. 4, L. 43 – 49 that Steven Schroeder ("Schroeder"), William Baumann ("Baumann") or Thomas N. Ryan ("Ryan") received a letter from the Union regarding commencement of bargaining on January 24, and hid behind the fact that the letter was addressed to a former Vice President, which reflected the Company's intention to delay the commencement of bargaining, as unsupported by the record as a whole. GC-2.

2. To the ALJ's conclusion of fact that Schroeder's testimony that Gilliam was not permitted to attend bargaining because he did not sign a Confidentiality Agreement was not credible, as contrary to the evidence in the record as a whole (ALJD. 7, FN. 24, L. 43-48). Tr. 63-66, 317-319, 324-325, 469-471, 547-552, 644-645, 678-680. GC Exh. 19, GC Exh. 20, R Exh. 19, R Exh. 20.

3. To the ALJ's finding of fact that Schroeder's contention that "nothing of significance" was discussed at the May 14<sup>th</sup> session was not credible, as contrary to the evidence in the record as a whole (ALJD. 8, FN. 27, L. 41-44). Tr. 69-72, 341-342, 477-479; ALJD 9, FN. 31, L. 37-43, Tr. 480-481, 564. GC Exh. 4, GC Exh. 6, GC Exh. 22.

4. To the ALJ's conclusion of fact that the Company's representatives claim the Federal Mediator, Guy Sarota, told the Company that the parties were at impasse was not supported by the credible testimony or other evidence (ALJD. 10, FN. 34, L. 44-48; ALJD. 10, L. 3-7), as contrary to the evidence in the record as a whole. GC Exh. 25.

5. To the ALJ's finding of fact that the Company's contention that the Union failed to respond to its first final offer between June 2 and June 6 is without merit (ALJD. 10, FN. 35, L. 49-52), as contrary to the evidence in the record as a whole. GC Exh. 26, Email dated June 5, 2008, 10:34 p.m.; Tr. 89-93, 362, 382-385, 571.

6. To the ALJ's finding of fact (ALJD. 11, L. 15-18) the Company's June 6 proposal did not "operate retroactively", as contrary to the evidence in the record as a whole and contrary to law. GC Exh. 9; GC Exh. 18; GC Exh. 28.

7. To the ALJ's finding of fact that Schroeder informed the employees on June 9 that there was no longer a labor representative for employees at the Company (ALJD. 12, L. 28-35; ALJD. 13, FN. 40, L. 28-29), as contrary to the evidence in the record as a

whole. Tr. 189, 194, 239-240, 251, 255-256, 259, 568, 615-616, 658; R Exh. 41; GC Exh. 32.

8. To the ALJ's finding of fact that Baumann and/or Schroeder urged the returning employees to withdraw their Union membership and/or ask them to sign a letter withdrawing from the Union (ALJD. 13, L. 13-23; ALJD. 13, FN. 43 and 44, L. 36-51), as contrary to the evidence in the record as a whole. Tr. 187-192, 205-207, 224-225, 234-235, 240-267.

9. To the ALJ's finding of fact that the Company made substantive changes to the revised final proposal following implementation with regard to vacation, sick leave, and leave of absence for union business, and that the Company does not deny making substantive change (ALJD. 13, L. 4-10; ALJD. 13, FN. 41), as contrary to the evidence in the record as a whole. Tr. 575-560.

10. To the ALJ's finding of fact that Schroeder delivered Union resignation letters to returning employees and that the Company was involved in the effort to decimate the Union's membership and decertify it (ALJD. 13, FN. 44, L. 49-51), as contrary to the evidence in the record as a whole. Tr. 187, 192, 205-207, 224-225, 234-235, 240-267.

11. To the ALJ's finding of fact and conclusion of law that Julian Stacy ("Stacy") telephoned Gilbert Alers ("Alers") on behalf of and with the authority of the Company (ALJD. 14, FN. 47, L. 44-48), as contrary to the evidence in the record as a whole and contrary to law. Tr. 502.

12. To the ALJ's finding of fact (ALJD. 14, FN. 45, L. 29) that Stacy directed employees Les Porzio and John Carasca to testify, as unsupported by the evidence in

the record and contrary to the evidence as a whole. Tr. 611-613, 617-620, 626-631, 634-636, 662.

13. To the ALJ's finding of fact that Ryan's May 12 letter to the Union conditioned that the resumption of bargaining on Jeff Gilliam's ("Gilliam") exclusion from the Union's bargaining team (ALJD. 16, L. 46-47; ALJD. 16-17, 49 and L. 1-3), as contrary to the evidence in the record as a whole. GC Exh. 20; R Exh. 19; R Exh 20.

14. To the ALJ's finding of fact (ALJD. 17, L. 5-6) that the Company's grounds for insisting on Gilliam's exclusion were shifting and baseless, as contrary to the evidence in the record as a whole. GC Exh. 20, R Exh. 19; R Exh. 20.

15. As to the ALJ's conclusion (ALJD. 19, L. 9-10) that the Company's contention that mediators advised its representatives that the parties are at impasse was not supported by credible testimony or other evidence, as contrary to the evidence in the record as a whole including ALJ's own finding of fact that the mediator recommended that the Company present "a last and final offer" to the Union in anticipation of the Contract's June 6 expiration. ALJD. 10, L. 3-7; GC Exh. 25.

16. To the ALJ's finding of fact (ALJD. 19, L. 16-17) that had the Company responded to the Union's January 22 letter, the parties would have had approximately four months in negotiations prior to the Contract expiration, as contrary to the evidence in the record as a whole. GC Exh. 1.

17. To the ALJ's finding of fact (ALJD. 19, L. 17-18; ALJD. 19, L. 41-43) that economic issues were only discussed during the final three bargaining sessions, as contrary to the evidence in the record as a whole. GC Exh. 6; R Exh. 5.

18. To the ALJ's conclusion of law (ALJD. 20, L. 28-30) that the Company violated §8(a)(5) and 8(a)(1) of the Act by unilaterally implementing its revised final proposal on June 9 without affording the Union an opportunity to continue bargaining, as contrary to the evidence in the record as a whole and contrary to law. GC Exhs. 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 21, 22, 23, 24, 25, 26, 27, 28; R Exhs. 3, 5, 6, 7, 9, 9A, 9B, 15, 22, 24, 26, 27.

19. To the ALJ's finding of fact and conclusion of law (ALJD. 20, L. 45-48; ALJD. 21, L. 7-12) that the Company denied its employees entry into the Company's facility and that denial constituted a lockout, as contrary to law.

20. To the ALJ's conclusion of law (ALJD. 21, L. 35-36) that the Company unlawfully implemented terms and conditions of employment, as contrary to law.

21. To the ALJ's conclusion of law (ALJD. 21, L. 39-40) that Stacy's statement to Alers constituted a threat in violation of §8(a)(1), as contrary to law.

22. To the ALJ's finding of fact (ALJD. 22, L. 5-8) that the Company initiated or promoted the effort to have employees resign from the Union and/or that Les Porzio was an agent for the Company, as contrary to the evidence in the record as a whole, and contrary to law. Tr. 560-565.

23. To the ALJ's finding of fact (ALJD. 22, L. 12-14) that the Company failed to demonstrate that the resignation effort was initiated solely by employees and that its role was limited to one of clerical support. Further, that the Company's effort to have employees resign from the Union created an atmosphere of coercion in violation of §8(a)(1), as contrary to law.

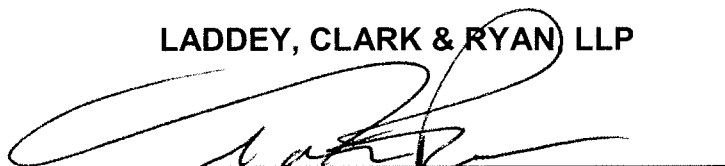
24. To the ALJ's conclusion of law (ALJD. 22, L. 46-47) that the Company unilaterally implemented changes to their terms and conditions of employment and illegally locked employees out, as contrary to law.

25. To the ALJ's finding of fact and conclusion of law (ALJD. 23, L. 7-13) that the Company had anti-union animus, unilaterally implemented terms and conditions of employment, illegally locked out employees and failed to offer evidence that it would have discharged employees even in the absence of their protected activity. Lastly, concluding the Company violated §8(a)(3) and 8(a)(1) of the Act by discharging the five employees because they supported the Union's request to continue bargaining over the terms and conditions of employment, and the evidence in the record as whole and contrary to law. GC Exh. 30.

26. To the ALJ's Remedy and proposed Order that the Company reinstate the terminated employees "to their former jobs or, if those jobs no longer exists, to substantially equivalent positions" (ALJD. 24, L. 1-5; ALJD. 25, L. 5-8), as contrary to law should jobs or substantially equivalent positions no longer exist.

Respectfully submitted this 18th day of September, 2009.

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